

★ MAY 04 2006 ★

BROOKLYN OFFICE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

PAUL EDWARD NOBLITT, )  
Plaintiff, )  
v. )  
JAMES BRIGHT, M.D., et al. )  
Defendants. )

05cv5648 (gbw)

Case No. 05-3486-CV-S-REB

State Court Case No. 05PO-CC00077

MOTION TO DISMISS AND SUGGESTIONS IN SUPPORT

COMES NOW, James Bright, M.D. by and through counsel and for his Motion to Dismiss and Suggestions in Support states the following:

1. On August 26, 2005, the Plaintiff, through his attorney, filed his Petition in the Circuit Court of Polk County, Missouri, naming as Co-Defendant, James Bright, M.D.

2. On September 26, 2005, Defendant, through his attorney, timely filed Defendant's Answer to the Plaintiff's Petition.

3. Prior to October 14, 2005, Plaintiff, through his counsel, agreed to voluntarily dismiss without prejudice Defendant, James Bright, M.D., and executed the same on October 13, 2005 (see attached exhibit A).

4. On October 14, 2005, Defendant Eli Lilly, through their counsel, filed Notice of Removal of Civil Action to the United States District Court for the Western District of Missouri, Southern Division.

Defendant James Bright, M.D. dismissed on  
Consent. It ordered  
J. Hollander 4/11/06

5. On October 17, 2005, Plaintiff, through his counsel, filed the executed voluntary dismissal without prejudice in the Circuit Court of Polk County, Missouri and notice was served on all parties of record.

6. On October 18, 2005, Judge John W. Sims entered his Order of Dismissal Without Prejudice for Defendant Dr. James Bright (see attached Exhibit B).

7. Plaintiff has executed a voluntary dismissal without prejudice that was filed and ordered in the Circuit Court of Polk County, Missouri after notice for removal of this matter to federal jurisdiction had been filed and for that reason the Court could not grant the order of dismissal. As there still exists the voluntary dismissal by the Plaintiff, Paul Noblitt, dismissing without prejudice his claims against the Defendant, James Bright, M.D., there exists no claim currently before this Court upon which relief can be granted.

8. The Court should dismiss the matter against Defendant, James Bright, M.D., as it is clear that the Plaintiff has abandoned the claim.

WHEREFORE, the Defendant, based upon the facts presented, prays this Court to grant his Motion to Dismiss and grant such other and further relief as the Court finds is just and proper.

**MALKMUS LAW FIRM, LLC**

  
\_\_\_\_\_  
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Springfield, MO 65806  
Telephone (417) 447-5000  
Facsimile (417) 447-5001

### ***Certificate of Service***

I hereby certify that on November 2, 2005 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Todd S. Hageman  
Mr. John F. Kuckelman  
Andrew Bruce See

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Barry H. Boise  
Nina M. Gussack  
Matthew J. Hamilton  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103

Kenneth T. Fibich  
W. Michael Leebron  
Fibich, Hampton, Leebron, LLP  
Five Houston Center  
1401 McKinney, Suite 1800  
Houston, TX 77010-9998

/s/ Brian D. Malkmus

## **EXHIBIT A**

IN THE CIRCUIT COURT OF POLK COUNTY  
STATE OF MISSOURI

PAUL EDWARD NOBLITT,  
Plaintiff,

v.

ELI LILY CO., INC., ET AL

Defendants

Cause No. 05PO-CC00077

Division No. 1

**VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

COMES NOW Plaintiff, by and hereby voluntarily dismisses Dr. James Bright,  
WITHOUT PREJUDICE, in the above captioned case.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Court  
enter an order of Voluntary Dismissal Without Prejudice for his action against Defendant, Dr. James  
Bright, only, and without prejudice.

Respectfully submitted,

By:

Todd. S. Haggman, #44770  
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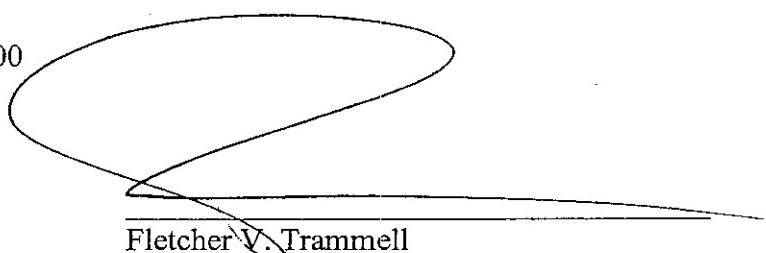
Kenneth T. Fibich  
Texas State Bar No. 06952600  
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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served on this 13th day of October, 2005, upon the following:

Mr. Brian D. Malkmus  
Malkmus Law Firm, LLC  
430 South Avenue, Suite 800  
Springfield, MO 65806

  
Fletcher V. Trammell

## **EXHIBIT B**

IN THE CIRCUIT COURT OF POLK COUNTY  
STATE OF MISSOURI

PAUL EDWARD NOBLITT,  
Plaintiff,

v.

ELI LILY CO., INC., ET AL

Defendants

Cause No. 05PO-CC00077

Division No. 1

**ORDER FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

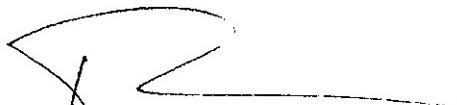
BE IT REMEMBERED that on this day came on to be considered the Plaintiff's Motion for Voluntary Dismissal Without Prejudice as to Defendant, Dr. James Bright, only, without prejudice, filed by Plaintiff, as to her cause of action against said in the above-entitled and numbered cause, and the Court, being fully advised, finds that Plaintiff's Motion for Voluntary Dismissal Without Prejudice should in all things be GRANTED. It is therefore,

ORDERED, ADJUDGED AND DECREED that the action of Plaintiff against Defendant, Dr. James Bright be and the same is hereby in all things non-suited without prejudice as to the right of Plaintiff to re-assert said cause of action, or any part thereof.

SIGNED this 18 day of October, 2005

JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

By: 

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**ATTORNEYS FOR PLAINTIFF**